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Robert T. Opal
General Counsel and IRA Counsel

March 13, 2008

Via E-Filing

The Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20024

**Re: Finance Docket No. 35087, Canadian National Railway Company, et.
al., -- Control -- EJ&E West Company**

Dear Secretary Quinlan:

Enclosed for filing in the above proceeding is the Reply of Union Pacific Railroad Company to Northeast Illinois Regional Railroad Authority, et al. (Metra)

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert T. Opal".

Robert T. Opal

cc. (w/attachments)
Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35087

**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK WESTERN CORPORATION
-- CONTROL --
EJ&E WEST COMPANY**

**REPLY OF
UNION PACIFIC RAILROAD COMPANY
TO
NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD AUTHORITY, ET AL. (METRA)**

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Dated & Filed: March 13, 2008

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Union Pacific Railroad Company ("UP") submits this Reply in response to the "Opposition Statement and Request for Conditions of Northeast Illinois Regional Commuter Railroad Authority and the Commuter Rail Division of the Regional Transportation Authority (collectively "Metra). We are confining this Reply to four conditions Metra is requesting (nos 3 - 6) for locations where EJ&E crosses UP lines which are used for Metra commuter service (the West Chicago and Barrington "Interlockers"), because these conditions would affect UP's passenger and freight operations.¹ The conditions appear designed to address Metra's concerns that increased train traffic on EJ&E might interfere with the commuter service operating on the UP lines. While UP is sensitive to Metra's concerns, we believe the conditions are unnecessary, and some of them could be counterproductive. Accordingly, UP opposes them and requests that they not be imposed.

¹ Metra proposed condition no. 7 also relates to these crossings. However, UP is not commenting on this condition because it is a reporting requirement which would not affect UP's operations.

I.

THE WEST CHICAGO AND BARRINGTON INTERLOCKERS

EJ&E lines cross UP lines used for Metra commuter service at two locations, referred to in railroad parlance as "interlockers"². At West Chicago, EJ&E crosses the UP "Geneva Subdivision" (the Metra "Union Pacific West" commuter line) and, at Barrington, EJ&E crosses the UP "Harvard Subdivision" (the Metra "Union Pacific Northwest" commuter line). Both of these crossings are at grade, and are controlled by EJ&E personnel. The West Chicago interlocker is controlled from a tower located at the crossing, while the Barrington interlocker is controlled remotely by an EJ&E dispatcher. In addition to commuter service, the two UP lines are also used for UP freights. The "Geneva Subdivision" (the line through West Chicago) is a particularly important freight line. It is the former C&NW Chicago-Omaha main line, and is UP's principal freight route to and from Chicago. There are over 60 freight trains operating over this line every day, and the combined freight and passenger traffic on this line is straining its capacity. The "Harvard Subdivision" (through Barrington) is also used for freight trains, primarily trains moving to and from Janesville, IL, the location of a major GM assembly plant.

EJ&E personnel physically control both crossings, but they are not free to operate the crossings as they please. There are long-standing agreements governing priority of trains at both crossings, and copies of the prioritization provisions are attached to this Reply as Exhibit 1 (West Chicago) and Exhibit 2 (Barrington). While not precisely identical,

² The term "interlocking" originated with the complex, hand operated "interlocking machines" originally created in the 19th century to safely control rail-rail crossings and junctions. The control levers on these machines were mechanically "interlocked" to physically prevent the tower operator from operating the levers in ways which could set-up conflicting train movements

they basically provide as follows:

1. Passenger trains of either railroad have priority over freight trains.
2. UP (C&NW) freight trains have priority over EJ&E freight trains.³

EJ&E has conscientiously abided by these agreements over the years, including the requirements for prioritization of trains. The agreements will continue in effect once CN acquires control of EJ&E West unless modified by mutual consent. We expect that a CN controlled EJ&E will continue to abide by these commitments.

II.

METRA'S REQUESTED CONDITIONS

The four Metra conditions are as follows: Condition 3 would transfer control of both crossings to Metra, Condition 4 -6 would apply if control of the crossings is not transferred to Metra. Condition 4 would establish curfews preventing any freight trains from operating over the interlockers during the morning and evening rush periods - roughly 6 hours per day. Condition 5 would require EJ&E dispatchers to give Metra commuter trains priority over EJ&E freight trains during non-curfew periods. Condition-6 would require EJ&E dispatchers to "take due account" of UP freight traffic in protecting commuter trains at the crossings. We will discuss each of these conditions below.

A. Condition 3 - Transferring Control of Interlockers to Metra

UP strongly objects to a condition transferring control of the interlockers to Metra. The condition would have the Board carve out islands on both railroads' lines through the

³ These provisions reflect the fact that C&NW (UP's predecessor) was the senior railroad at both crossings.

interlockers, and hand over dispatching of these islands to Metra, effectively creating Metra controlled bottlenecks. Metra has no legitimate basis for such a proposal. Metra does not own any of the UP rail lines that go through these interlockers (or the EJ&E line). It has no dispatching rights over these lines. It does not even operate any trains on these lines. UP operates passenger trains for Metra, and the agreement governing this operation gives Metra no dispatching rights over these lines. Neither UP nor C&NW (UP's predecessor) have been willing to surrender dispatching control of these lines to Metra, particularly the Geneva Subdivision through West Chicago, which is a key freight route. It is totally inappropriate for the Board to give Metra dispatching rights over UP owned trackage that Metra does not have under its agreement with UP.

Moreover, the proposed condition would do nothing to facilitate train traffic over the interlockers - if anything, it would have the opposite result. By creating Metra controlled islands at the interlockers, it would require an additional dispatching handoff for each train using the interlockers, both freight and passenger. To make matters worse, the Metra personnel would not be under control of the dispatchers of either of the railroads using the interlockers, so the decisions made by the Metra operator could easily be inconsistent with the decisions being made by the two railroads' dispatchers. This division of responsibility and the additional handoffs would simply make it more difficult to coordinate operation the interlockers for both Metra trains and UP and EJ&E freight trains. ⁴

⁴ At p. 11 of its filing, Metra claims that it is in a position to take on control of the two UP-EJ&E interlockers because it already controls the interlocker where its Rock Island District line crosses EJ&E. But the difference is that Metra owns and dispatches the Rock Island District line - the RI-EJ&E interlocker isn't a Metra controlled island in the middle of lines dispatched by other railroads (as the UP-EJ&E interlockers would be under the proposed condition). We doubt that Metra would even consider transferring control of the RI-EJ&E interlocker to a third party not under the control of either the Metra or EJ&E dispatchers

In the alternative, Metra proposes (p. 11) that control of the two interlockers be transferred to UP. That is certainly preferable to transferring control to Metra, as it would avoid the additional handoffs and division of responsibility discussed above. UP would be willing to assume control of the two interlockers as part of a negotiated arrangement. But UP does not see any need for a condition compelling a transfer of control. As previously noted, the underlying agreements for the interlockers address the priority of trains at the interlockers, and UP expects that EJ&E will abide by them post - transaction. The Board should not require changes in long-standing negotiated inter-railroad dispatching arrangements based simply on speculation as to what one railroad might do.

B. Condition 4 - Curfew of Freight Operations Through Interlockers

This condition would impose an absolute prohibition for operation of freight trains through the two interlockers for roughly 6 hours per day, 3 hours in the morning and 3 hours in the evening. As requested, it would apply to both UP and EJ&E freight trains.

Again, UP strongly opposes this or any other condition that would affect UP's freight operations on its own railroad. UP's contract with Metra does not require any freight curfews. UP and C&NW have historically curfewed most freight operations during the commuter rush periods because, due to the existing infrastructure on these lines, attempting to run more than a very limited number of freights would interfere with commuter schedules. Given current freight traffic and capacity constraints on the Geneva Subdivision (the UP line through West Chicago), UP is looking into infrastructure improvements and other ways to allow freight service to be operated on demand on this line during rush periods without affecting commuter schedules. However, the proposed

condition, by prohibiting the operation of any freight trains through the West Chicago interlocker, would make it impossible for UP to operate both its trains and Metra's on demand, regardless of what infrastructure improvements are made. There is obviously no reason for such a result.

Further, Metra's rights with respect to the commuter service UP operates for it are defined by a negotiated agreement between UP and Metra. That agreement does not give Metra any control over UP's freight lines, or any right to prohibit UP's use of its freight lines for freight service at any time. UP has the right to determine how to operate its rail lines and accommodate commuter schedules, not Metra. As with Condition 3, it is totally inappropriate for the Board to give Metra rights that Metra does not have under its agreement with UP.

C. Condition 5 - Priority of Metra Non Rush Hour Trains Over EJ&E Freight trains

This condition is unnecessary. As previously discussed, the UP-EJ&E agreements governing the crossings require passenger trains to have priority over freight trains at all times.

D. Condition 6 - "Due Regard" for UP Freight Trains

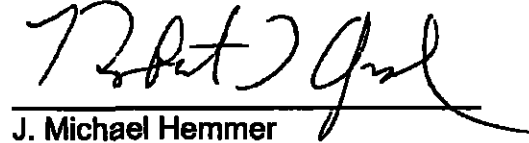
This condition is also unnecessary. While it may seem vague and harmless, it is actually less protective of UP freight traffic than the existing agreements governing the crossings (which require UP freight trains to have priority over EJ&E trains). If the Board imposed such a condition, the condition could be argued to supercede the terms of the agreement. Although we do not anticipate that EJ&E would take such position, this could adversely effect UP freight traffic, not help it.

CONCLUSION

For the reasons stated above, UP respectfully requests that the Board deny Metra's proposed conditions 3-6. The conditions are not needed to protect the commuter trains which UP operates for Metra, are largely contrary to the underlying agreements UP has with Metra and EJ&E, and would interfere with UP's freight operations over its own rail lines.

UNION PACIFIC RAILROAD COMPANY

By:



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EXHIBIT 1

**West Chicago Crossing Agreement
(Excerpt) - April 3, 1919**

ORIGINAL STORED IN ENVELOPE
AT REAR OF BATCH

- 5 -

that the Elgin Company shall not be required to replace any crossings installed or on hand, at the time the changes are required, until the same are worn out.

SEVENTH. The Elgin Company agrees that it will not interfere with or obstruct in any manner the drainage of the right of way and tracks of the North Western Company at said crossings and that it will make provision for draining its own railroad so as to prevent the water from its side ditches and right of way from flowing upon the right of way of the North Western Company.

EIGHTH. It is mutually understood and agreed that passenger trains of the North Western Company shall have the right of way over said crossings in preference to passenger trains of the Elgin Company and that freight trains of the North Western Company also shall have the right of way over said crossings in preference to freight trains of the Elgin Company; provided, however, that in all cases passenger trains of each party hereto shall have the right of way over said crossings in preference to all freight trains of the other party.

NINTH. The Elgin Company, except as otherwise provided in Sections Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth hereof, at its own sole expense, shall:

EXHIBIT 2

Barrington Crossing Agreement (Excerpt) - September 12, 1889

The foregoing grant is expressly conditioned upon the performance by the said party of the second part of all and singular, the covenants and agreements hereinafter set forth, to be by it kept and performed as follows, to wit: and a default in or failure to perform any of said covenants, or a breach in any of said conditions, shall work an absolute forfeiture of said grant.

First: That the first party, notwithstanding the aforesaid grant, shall have the right to retain the track or tracks, now owned and operated by it, at the point or points of crossing aforesaid, and said party of the second part agrees that nothing shall be done or suffered to be done by it, that shall in any manner materially impair the usefulness of said existing track or tracks of the party of the first part, or of such track or tracks as may be hereafter constructed by said party of the first part as hereinafter provided.

Second: It is understood and agreed between the parties hereto, that the said party of the first part shall have the right at any and all times hereafter to lay down, maintain and operate over the track or tracks of the party of the second part herein authorized to be laid down, such other and further tracks as it may elect to lay down, and when it shall elect to lay down any such track or tracks, the said party of the second part will, upon notice of such election, provide the materials for and properly equip all the crossings with such additional track or tracks, according to such plans and specifications as the party of the first part may prescribe, and if it fail so to do within a reasonable time after receiving such notice, the party of the first part may construct such track or tracks, and the party of the second part agrees that it will promptly pay to the party of the first part the full cost of such crossings and of the construction thereof, and of maintaining the same with said additional track or tracks.

Third: The said party of the second part agrees that it will furnish the materials for and construct and put in all crossing frogs, crossing signals, gates and targets and other fixtures necessary to make the crossings with the existing tracks of the party of the first part at the points aforesaid, strictly in accordance with such plans and specifications as shall be prescribed by the chief engineer of the party of the first part; and that the said party of the second part will at its sole cost and charge forever maintain and keep to good repair, and renew from time to time when necessary, all the crossing frogs, crossing signals, gates and targets, and other fixtures provided for in the indentures, whether of existing tracks or of such as may be hereafter laid by the party of the first part, all in such manner as shall be satisfactory to the said party of the first part. In the event that it does not make all such repairs or renewals when reasonably required as to do the party of the first part may make the same and the party of the second part agrees that it will promptly pay to the party of the first part the full cost thereof.

Fourth: If at any time hereafter the business of the party of the first part, on the laws of the State of Illinois or the ordinances of any municipal corporation of said State, shall make it necessary to station flagmen at the said crossings, the said party of the second part shall make it necessary or proper to erect crossing signals or gates thereat, and the said party of the first part shall have the right to employ such flagmen, and to establish such signals and gates, and the said party of the second part will pay the wages of such flagmen promptly as the same become due from time to time, and the cost of the construction, maintenance and operation of such signals or gates. Any such flagmen shall be appointed by said party of the first part, but subject to the approval of the General Superintendent or other managing officer of the party of the second part, and the said party of the second part shall have the right to require the discharge of such flagmen if there be good and sufficient reason therefor, to be determined by its General Superintendent, or other proper managing officer, who shall state such reason in writing to the party of the first part if required.

Fifth: In the passage of the respective trains of the parties hereto over the aforesaid crossing, if passenger trains of each of said parties arrive at such crossing, simultaneously, the passenger trains of the party of the first part shall have preference in passing over said crossing, over the passenger train of the party of the second part; and in like manner freight trains of the party of the first part shall have preference over freight trains of the party of the second part, but in all cases passenger trains shall have preference over freight trains.

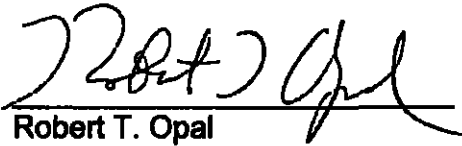
Sixth: The said party of the second part shall pay the full cost of any connecting or transfer track that may be at any time required at the point of crossing aforesaid, whether such track shall be ordered by competent authority or put in by agreement between the parties hereto.

Fifth: It is understood and agreed that the crossing with said first track is to be made at the point of crossing aforesaid, and that the party of the second part shall provide the materials for and properly equip all the crossings with such additional track or tracks, according to such plans and specifications as the party of the first part may prescribe, and if it fail so to do within a reasonable time after receiving such notice, the party of the first part may construct such track or tracks, and the party of the second part agrees that it will promptly pay to the party of the first part the full cost of such crossings and of the construction thereof, and of maintaining the same with said additional track or tracks.

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon all parties of record, as listed in the Board's decision served January 25, 2008 in this proceeding. Service was made by first class United States Mail:

Dated at Omaha, Nebraska this 13th day of March, 2008.


Robert T. Opal